

## **REMARKS**

Applicants wish to thank the Examiner for reviewing the present patent application.

### **I. Restriction**

Applicants confirm the election of claims 1-14, but again believe that all claims of record may be examined without serious burden to the Examiner. Applicants will consider filing a divisional application for claims 15 and 16 and canceling the same in this application upon an indication from the Examiner that claims 1-14 are in condition for allowance.

### **II. Rejection Under 35 USC §112, paragraph 2**

The Examiner has rejected claims 2, 4, 6 and 13 under 35 USC §112, paragraph 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Particularly, the Examiner notes that the aforementioned claims are deplete of appropriate punctuation. In view of this, Applicants have added periods to these claims and respectfully request that the rejection made under 35 USC §112, paragraph 2 be withdrawn and rendered moot.

### **III. Rejection Under 35 USC §102(e)**

The Examiner has rejected claims 1, 2, and 14 under 35 USC §102(e) as being anticipated by Patil et al., U.S. Patent No. 6,348,224 (hereinafter '224). In the rejection, the Examiner mentions, in summary, that the '224 reference discloses a

process of manufacturing a large leaf black tea comprising withering tea leaves to a moisture content of around 70% and macerating the same using both a rotorvane and a CTC machine to cause the tea to ferment and inherently provide for an infusion typical of CTC teas while maintaining the appearance of an orthodox tea. In view of this, the Examiner believes that the anticipatory rejection under 35 USC §102(e) is appropriate.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a process for manufacturing larger leaf black tea comprising the steps of withering and macerating tea leaves and allowing them to ferment, firing the tea leaves to arrest fermentation and then drying and sorting them to yield black leaf tea, the process being characterized in that the tea leaves are withered to a moisture content of between 64% and 70% before being macerated by the controlled application of both shear and compression forces sufficient to disrupt the majority of cells within the tea leaf, to introduce morphological changes in the tissue and to redistribute the cell contents, all of which leads to fermentation and infusion typical of CTCTs, while maintaining the appearance of orthodox tea.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, the moisture content, and use of an extruder machine.

In contrast, the '224 reference discloses a method for manufacturing black leaf tea whereby freshly plucked tea leaves are macerated, then treated with ammonium bicarbonate and fermented and subsequently fired to arrest fermentation wherein the leaves are dried to yield black leaf tea. The process of the presently claimed invention first withers the tea leaves to a moisture content of between 64% and 70% before macerating the leaves. The moisture content of the leaves followed by macerating with controlled shear and compression forces (as well as the arresting fermentation) yields a black leaf tea having infusion of typical CTCs while unexpectedly at the same time having the appearance of orthodox tea. Nothing in the '224 reference even remotely suggests the appearance of orthodox tea as set forth in the presently claimed invention and the Examiner has not put forth any evidence supporting his conclusion that the tea described in the '224 reference would have an orthodox appearance.

Since all the important and critical limitations set forth in the present claimed invention are not set forth in the '224 reference, the anticipatory rejection is improper and must be withdrawn and rendered moot.

#### IV. Rejections Under 35 USC §103

The Examiner has rejected claim 2 under 35 USC §103 as being unpatentable over Patil et al., U.S. Patent No. 6,348,224 (hereinafter '224).

Nevertheless, Applicants respectfully wish to point out that the '224 reference is assigned to Lipton, Division of Conopco, Inc. The present patent application is now assigned to Unilever Bestfoods, North America, Inc., a Division of Conopco, Inc. The former name (namely the Lipton name) is now known as Unilever Bestfoods, North

America, Inc., a Division of Conopco, Inc. Therefore, the '224 reference is not prior art under 35 USC §103(c) since the invention set forth in the present application was made when the invention of the technology set forth in the '224 reference was under an obligation to be assigned to a common assignee. Applicants therefore request that the obviousness rejection be withdrawn and rendered moot.

V. Rejection Under 35 USC §103

The Examiner has rejected claims 3–13 under 35 USC §103 as being unpatentable over Patil et al., U.S. Patent No. 6,348,224 (hereinafter '224) taken together with SU 466,015.

Nevertheless, in view of Applicants' comments above, the '224 reference is not prior art under 35 USC §103(c).

Based on the foregoing, Applicants respectfully submit that all rejections of record be withdrawn and rendered moot. Applicants further submit that all claims of record are now in condition for allowance.

Favorable action is respectfully requested.

In the event the Examiner has any questions concerning the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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